Appendix A

APPEAL from an order of the Superior Court of Marin County denying petition for writ of mandate and for an order directing issuance of remittitur. Appeal dismissed on motion.

Proceeding in mandamus to compel warden of state prison to institute proceeding for determination of sanity of a prisoner under sentence of death. Appeal from order denying writ, dismissed; stay of execution theretofore granted, terminated.

George T. Davis for Petitioner.

Edmund G. Brown, Attorney General, and Clarence A. Linn, Assistant Attorney General, for Respondent.

McCOMB, J.—This is a motion to dismiss an appeal from an order denying a petition for a writ of mandate and also for an order directing the issuance of the remittitur forthwith.

Chronology

i. Defendant's conviction of two first degree murders was affirmed by this court February 1, 1956. (*People v. Caritativo*, 46 Cal.2d 68 [292 P.2d 513].)

ii. Petition for a rehearing was denied February 29, 1956.

iii. Petition for a writ of certiorari was filed with the Supreme Court of the United States and denied June 4, 1956.

iv. On June 18, 1956, the death penalty was imposed on defendant and the date of execution set for August 31, 1956.

v. On April 27, 1956, George T. Davis, attorney for defendant, was informed that the prison psychiatrists were of the opinion defendant was sane.

vi. On May 24, 1955, three psychiatrists on the medical unit of the California State Prison at San Quentin, to wit, David G. Schmidt, M.D., Chief Psychiatrist, M. M. Kirksey, M.D., and M. D. Willcutts, M.D., Chief Medical Officer, advised the warden relative to defendant:

"We are agreed he has some expansive grandiose ideas and feelings of persecution; but no delusions or hallucinations are elicited and he knows the crime of which he was convicted and sentenced to execution and we are agreed he is not insane, albeit he has a Paranoid Personality with some Schizoid and some Neurotic Elements."

vii. On March 30, 1956, Dr. Willcutts, Dr. Schmidt and Dr. Kirksey, all on the prison staff, advised the warden relative to defendant:

"He shows he is oriented well in all spheres, that he has a good memory and still gives some evidence of some expansive grandiose ideas and feelings of persecution. He has a Paranoid Personality with some Schizoid and Neurotic elements; but we are all agreed that he is not insane."

viii. On May 2, 1956, Dr. Willcutts, Dr. Schmidt and A. D. Kopac, M.D., Psychiatrist, all on the prison staff, informed the warden relative to defendant:

"He knows the crime for which he is sentenced, but he does not know, or will not say definitely where his case is in the courts, but feels that Mr. Davis will take good care of his case.

"This subject has a good memory, he is oriented in all spheres, knows right from wrong, is aware of the crime for which he was sentenced and for which he faces execution. He exhibits some grandiose ideas and feelings of persecution, but we are all agreed that he is not insane. He has a paranoid personality with schizoid and neurotic elements."

ix. On August 7, 1956, Dr. Willcutts, Dr. Schmidt and Dr. Kopac advised the warden concerning defendant:

"This subject has a good memory, is oriented in all spheres. He knows right from wrong and is aware of the crime for which he was sentenced and for which he faces execution. He exhibits many grandiose ideas and feelings of persecution; but we are all agreed that he is not legally insane. He has a Paranoid Personality with many Schizoid and Neurotic Elements."

The record fails to disclose any evidence contradicting the findings of the doctors as set forth above.

x. On August 30, 1956, defendant filed a petition for a writ of mandate in the Superior Court of Marin County seeking to compel the warden of San Quentin penitentiary to institute proceedings to determine the present sanity of defendant. The writ was denied by the superior court on the same date and a notice of appeal immediately filed with this court. On August

31, 1956, a stay of execution pending the appeal from the order denying the petition for a writ of mandate was granted.

[Legal discussion omitted.]

Appendix B

In the Supreme Court of the State of California

S. F. No. 19,603

Bart Luis Caritativo,
Petitioner and Appellant,
vs.
Harley O. Teets, Warden, California State Prison at San Quentin,
Respondent and Appellee.

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS

State of California
City and County of San Francisco—ss.

Harley O. Teets, being first duly sworn deposes and says:

That he is and at all times mentioned in this affidavit has been the Warden of the California State Prison at San Quentin, California, and has had in his custody Bart Luis Caritativo.

That on the prison staff there is a medical unit on which there are a number of psychiatrists.

That these psychiatrists from time to time advise affiant as to the physical and mental condition of prisoners condemned to death.

That on May 24, 1955, David G. Schmidt, M.D., Chief Psychiatrist, M. M. Kirksey, M.D., Psychiatrist, and M. D. Willcutts, M.D., Chief Medical Officer, all on the staff of the prison, advised affiant concerning Bart Luis Caritativo as follows:

> "We are agreed he has some expansive grandiose ideas and feelings of persecution; but no delusions or hallucinations are elicited and he knows the crime of which he was convicted and sentenced to execution and we are agreed he is not insane, albeit he has a Paranoid Personality with some Schizoid and some Neurotic Elements."

That on August 7, 1956, M. D. Willcutts, M.D., Chief Medical Officer, David G. Schmidt, M.D., Chief Psychiatrist, and A. D. Kopac, M.D., Psychiatrist, all on the prison staff, advised affiant concerning Bart Luis Caritativo that:

> "This subject has a good memory, is oriented in all spheres. He knows right from wrong and is aware of the crime for which he was sentenced and for which he faces execution. He exhibits many grandiose ideas and feelings of persecution; but we are all agreed that he is not legally insane. He has a Paranoid Personality with many Schizoid and Neurotic Elements."

That on March 30, 1956, M. D. Willcutts, M.D., Chief Medical Officer, David G. Schmidt, M.D., Chief Psychiatrist, and M. M. Kirksey, M.D., Psychiatrist, all on the prison staff, advised affiant concerning Bart Luis Caritativo that:

"He shows he is oriented well in all spheres, that he has a good memory and still gives some evidence of some expansive grandiose ideas and feelings of persecution. He has a Paranoid Personality with some Schizoid and Neurotic elements; but we are all agreed that he is not insane."

That on May 2, 1956, M. D. Willcutts, M.D., Chief Medical Officer, David G. Schmidt, Chief Psychiatrist, and A. D. Kopac, M.D., Psychiatrist, all on the prison staff, advised affiant concerning Bart Luis Caritativo that:

"He knows the crime for which he is sentenced, but he does not know, or will not say definitely where his case is in the courts, but feels that Mr. Davis will take good care of his case.

"This subject has a good memory, he is oriented in all spheres, knows right from wrong, is aware of the crime for which he was sentenced and for which he faces execution. He exhibits some grandiose ideas and feelings of persecution, but we are all agreed that he is not insane. He has a paranoid personality with schizoid and neurotic elements."

That as early as April 24, 1956, George T. Davis, Attorney for Bart Luis Caritativo, contacted the officials at the prison and asked permission to have Dr. Bernard Diamond interview said Caritativo and was advised on or about April 27, 1956, that the prison authorities would not permit Dr. Diamond to interview said Caritativo.

That said George T. Davis was on April 27, 1956, given a copy of the conclusions of the prison psychiatrist concerning said Caritativo, which copy is attached to the petition herein.

That said George T. Davis was advised as early as the month of May, 1956, that affiant would rely on the advice of the members of his staff as to the mental condition of Bart Luis Caritativo.

Harvey O. Teets.

Subscribed and sworn to before me this 4th day of September, 1956.

/s/ Clarence A. Linn,
Assistant Attorney General.

Appendix C

AFFIDAVIT OF FRED R. DICKSON

State of California,
County of Marin—ss.

Fred R. Dickson, being first duly sworn, deposes and says:

That since September 4, 1957, he has been and is presently the Warden of the California State Prison at San Quentin, California, and has had in his custody Bart Luis Caritativo.

That on the prison staff there is a medical unit on which there are a number of psychiatrists; that the procedure established and followed requires a psychiatric report of condemned prisoners to be filed by the psychiatric staff with the warden within 60 days after receipt of the condemned prisoner at the institution. That thereafter the warden requests such psychiatric examinations as he deems advisable and that in all cases a psychiatric report of a condemned inmate's mental condition is made by the psychiatrists to the warden within 20 days of the scheduled execution.

That he has reviewed the prior psychiatric reports made to Warden Teets; that on February 14, 1958, David G. Schmidt, M.D., Chief Psychiatrist; M. D. Willcutts, M.D., Chief Medical Officer and A. D. Kopac, M.D., Psychiatrist II, all on the prison staff, advised affiant concerning Caritativo, that Caritativo presents what appears to be continuing delusional

productions and a history of previous hallucinatory experiences of both an auditory and visual nature. He exhibits some grandiose ideas and feelings of persecution in association with this though content. He is mentally quite alert, and his intellectual production is in keeping with a high-normal intelligence with adequate grasp and comprehension of his environment and the material under discussion. He is oriented in all spheres—time, place and person. He is aware of the crime for which he was convicted and is sentenced to death. That the subject has a Paranoid Personality with Schizoid and Neurotic elements; but that he is not insane.

That your affiant has himself, personally, observed the conduct of Caritativo and that neither from the psychiatric reports, his own observation, nor the reports of his custodial staff has he any reason to believe that Caritativo is presently insane.

That your affiant intends to follow the statutes of California and to institute proceedings to determine Caritativo's sanity pursuant to section 3701 of the Penal Code, if and when he has "good reason to believe" Caritativo is insane.

FRED R. DICKSON.

[jurat on original]